IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.732 OF 2005

IN

SUIT NO.2888 OF 2005

...

Joy K.J. ...Plaintiff

v/s.

Suresh V. Rajeshwar ...Defendant

...

Plaintiff in person.

Mr.Sajan Oommen for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 12TH JUNE, 2006

P.C.:

1. The Plaintiff has filed this suit for recovery of Rs.2,00,000/- with interest, which was paid by the Plaintiff as earnest money.

2. The facts relevant for deciding this summons for judgment are that the Plaintiff and the Defendant entered into a memorandum of understanding for sale of two flats. Price of each flat was fixed at Rs.5 lakh. The Plaintiff paid an amount of Rs.7 lakh. Admittedly, sale deed of one flat is executed in favour of the Plaintiff. The Plaintiff is asking refund of the balance amount of Rs.2 lakh which was paid as earnest money in relation to other flat.

3. The case of the Defendant appears to be that Rs.2 lakh were paid as earnest money, but despite extension of time granted the Plaintiff was not in a position to pay the balance amount of consideration and therefore, the Defendant has forfeited the amount of earnest money.

3. The Plaintiff claims that he is entitled to institute a summary suit because of an endorsement made on memorandum of understanding by the Defendant, which says that the Defendant indemnifies and will pay back if deal is aborted or cancelled. Even assuming that there is an endorsement made by the Defendant, this will give a right to the Plaintiff for refund of the amount if the contract cannot be completed for any fault of the Defendant. It prima facie appears that it was the inability of the Plaintiff to pay the balance of amount that prompted the Defendant to terminate the contract. Whether the Defendant is justified in forfeiting the money is a question to be decided and the defence that has been offered by the Defendant, in my opinion, is substantial and therefore, the Defendant would be entitled to unconditional leave to defend the suit. Summons for judgment disposed of. Defendants to file their written statement within four weeks from today. Suit be transferred to commercial cause list.

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